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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Araceli Martínez-Olguín, Judge

BIT GLOBAL DIGITAL LIMITED,)	
)	
Plaintiff,)	
)	
VS.)	NO. 3:24-CV-09019-AMO
)	
COINBASE GLOBAL, INC.,)	
)	
Defendant.)	
_____)	

San Francisco, California
Thursday, May 15, 2025

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Also Present: David Shieh, Coinbase

REPORTED REMOTELY BY: Stephen W. Franklin, RMR, CRR, CPE
Official United States Reporter

Thursday - May 15, 2025

11:05 a.m.

P R O C E E D I N G S

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THE COURT: You may be seated.

THE COURTROOM DEPUTY: Calling civil action C-24-9019, BiT Global Digital Limited versus Coinbase Global, Inc. Counsel, can you please come up to the podium and state your appearances? The court reporter is remote, so he will need to look at your face.

MR. KNEUPPER: Kevin Kneupper appearing for plaintiff BiT Global.

THE COURT: Good morning.

MS. MEHTA: Good morning, Your Honor. Sonal Mehta from Wilmer Hale for Coinbase, and with me today is my colleague, Paul Vanderslice and then we have David Shieh, associate general counsel at Coinbase, with us, as well.

THE COURT: Thank you. Good morning.

So we're here on defendant's motion to dismiss, and while it's customary for that reason to have defendant present argument first and then ask plaintiff to rebut and sort of go back and forth, I want to take a slightly different approach with you all today, because I want -- I just want to start by commenting that at this -- from reviewing the papers, from thinking on it, my inclination at this point is to grant the motion to dismiss. And so I want to walk you through, I want

1 to walk plaintiff through my thinking and have you tell me
2 where you think I have it wrong, and then I want to talk very
3 specifically about leave to amend. So I think I just want to
4 under' -- here's how I'm thinking or how I'm cognizing your
5 complaint right now.

6 Many of those claims, many of those claims are based --
7 require you pleading plausibly the falsity of Coinbase's
8 statements, and my list includes the Sherman Act disparaging
9 statements, theory like that, both of the Sherman Act claims,
10 the Lanham Act claim, the UCL fraud claim and the trade liable
11 claim, I think all of those require that you have plausibly --
12 that you can plausibly plead that those statements are false.

13 At this point, based on the statements themselves I'm not
14 convinced they are. So I'm curious what you could possibly
15 add, how you could amend. If I think that as a legal matter
16 those aren't false, is there anything to be gained through
17 leave to amend?

18 **MR. KNEUPPER:** I think, Your Honor, I think at the
19 outset we disagree at least on some aspect of that. And this
20 is argued in the brief on Lanham Act as to whether falsity is
21 required or whether there can be an implication that is false.
22 And I think that that's an important distinction for these
23 claims and these theories is the question of not just whether
24 these words are literally false as they are uttered, or was
25 there an implication that there was something, some hidden

1 information, things that are alleged in the complaint and
2 outlined in our opposition that we allege are implications that
3 were being made.

4 And in terms of plausibility, as to that aspect, I think
5 Coinbase's own motion really reveals how plausible this is,
6 because if you even just go to the introduction and start
7 reading what Coinbase starts their first motion out with --

8 **THE COURT:** Okay. No, no, no. I'm not -- we're not
9 going there, because I'm asking you about the statements they
10 have made, not their arguments. I'm looking at their
11 statements, I'm looking at your theories about their
12 statements, and I take your point that you think that the
13 Lanham Act claim doesn't require falsity. I'll take that
14 point from you. But talk to me then about the others, because
15 I also take from you -- I followed the thread in your brief
16 about the implication of what one could conceivably have
17 understood from reading that statement. Okay. I understand
18 that's your position. I'm asking you that if I disagree
19 with you -- and that's the point. I get that you disagree with
20 me, but the point is I'm the one writing something ostensibly
21 here.

22 So, okay. You -- I want you to walk me down the path of
23 if I've already concluded, if I conclude that those statements
24 are not false, what -- which of these claims, if any -- well,
25 you can -- I do appreciate you telling me why you think -- if

1 you want to tell me why you think that's wrong, great. I
2 invited you to do that. I asked you to tell me why that's
3 wrong in the first place. Fine. But beyond that, what, if
4 anything, could you add on leave to amend?

5 **MR. KNEUPPER:** Once you get past the implication, the
6 separate aspect that Your Honor's pointing to is is this
7 statement literally false when they say that they had conducted
8 this sort of neutral review process in getting to their
9 decision to delist WBTC. And I think what's important for the
10 Court to consider on this is the plausibility standard and how
11 low that is in terms of when they've offered this alternate
12 explanation, and that's what they've done is said, no, we just
13 followed this, you know, they don't provide you any e-mails,
14 internal documents, any details on this.

15 **THE COURT:** This is the motion to dismiss stage. I
16 couldn't consider any of that even if they did give it to me.

17 **MR. KNEUPPER:** But I think on whether that's -- if
18 you're just asking is this a plausible explanation that right
19 after the -- they decide to launch this, their competing
20 product, they do this delisting. So that's something that even
21 just from temporal proximity does suggest that there could be
22 other motivations behind this, that this is not really what
23 happened was a neutral delisting process. And some of this is
24 stuff that's in the complaint. I think that, you know, we have
25 many of these facts in there that I think support this under

1 this low plausibility standard.

2 After, and continuing --

3 **THE COURT:** Can I just say, this is the first time
4 I've ever heard plausibility under *Iqbal* or *Twombly* referred to
5 as a low standard. That's not how I'm used to cognizing it, so
6 keep -- but tell me. Right? I guess I'm curious, then,
7 because I don't think there's any case from you about -- I
8 don't think I have any cases from you about pretext serving as
9 a method to prove up or even plead some of these causes of
10 action. Am I wrong about that?

11 **MR. KNEUPPER:** I don't recall if we have a specific
12 case on pretext, Your Honor. I don't think that we do. But I
13 think what it comes to, and I do view the standard as, you
14 know, it's a raising of the old standard, which, if we were
15 talking about relative lack of standard, and it certainly
16 pre-*Twombly* was much lower. But I think still when you're
17 considering -- you're not considering which is the most
18 reasonable explanation. You're not considering is their
19 explanation better, is their explanation reasonable. You're
20 asking could a reasonable juror agree with our explanation of
21 the facts that this statement was literally false, and I think
22 that what we've pled in there is more than sufficient to get
23 over that hurdle.

24 When you're looking at these two explanations, once
25 they've proffered this ultimate explanation you have to look is

1 this -- can a reasonable juror agree with what we're saying.
2 And when you have this -- there's these temporal facts that
3 we're pleading about the differences in time. I think some of
4 the stuff that we likely could add on leave to amend is some of
5 the things that have happened after the complaint and the
6 things that have happened since then. And that is the reason I
7 was suggesting looking to the opening of the brief, the just
8 really what they're saying in there and even saying in their
9 declaration is you can see it's sort of this -- they're saying
10 the quiet part out loud is the way I would put it, the things
11 when they're saying that, oh, we just did -- their version to
12 you is we just did this because we were following a neutral
13 standard and we thought this was risky, but you see that
14 their whole brief is sort of a launching into implications
15 and innuendo and the exact same things we were saying that
16 they were trying to imply to the public in the first place in
17 this.

18 And when you look at what they say they were relying on,
19 some of this, when you're asking like is it reasonable for the
20 plaintiff to suggest this, could a jury believe that they're
21 not telling the truth when they say this, we could plead
22 additional facts. And as you say, it's not part of the
23 complaint now, but could it be added? Look at the declaration
24 that they cite. It's talking about a blog article from 2018
25 and saying this is the reason why we did this. There are

1 additional e-mails that are back and forth between the parties
2 that we certainly disagree with their characterization about
3 what they were -- what happened when they say, oh, BiT Global
4 didn't respond to our request for information. We don't think
5 that's correct.

6 We think we could add facts on that that suggest that that
7 is not a true description of what happened.

8 And if the Court is given additional facts that say, look,
9 this -- the way that they came in with this, again, yes, a
10 post-complaint declaration, but they're telling you that this
11 is this certain alternate explanation, and it doesn't really
12 fit with the facts, I don't think.

13 **THE COURT:** All right. But what I hear you positing
14 are additional facts to bolster your existing contentions that
15 these statements imply, that there is something by implication
16 that makes them false. I don't -- I just want to try asking
17 this one more time in order to have you redirect me a bit here,
18 but I don't necessarily hear you saying that there's more
19 you -- you're resting on the idea that it's all pretextual and
20 that that is why those statements are false, because their
21 assertions, they acted for different reasons than the ones
22 stated in the -- they're very short statements. I don't know
23 that they're ...

24 All right. What am I missing? I just want to ask that
25 one more time before I move on, but what have I missed about

1 your argument?

2 **MR. KNEUPPER:** I think you're correct, Your Honor,
3 that it kind of blends a little together in terms of the
4 literal falsity versus implications just because it's a common
5 core facts. But I think if you -- if you're isolating to
6 literal falsity, it's the statement, we did this neutral
7 review, and based on that review we have decided, based on it
8 not meeting our listing standards, we have decided to delist
9 it. That is a factual statement. So regardless of
10 implications, if that factual statement is not true, then
11 it's -- I think, you know, certainly even regardless of the
12 disagreement on whether some of these laws allow statements by
13 implication, that is a literal factual implication and one that
14 has consequences for a competitor.

15 If you're making a statement, we've looked at your
16 cryptocurrency, we do not think it meets these listing
17 standards and thus we are removing it, they didn't have to make
18 a statement at all. They didn't have to say any of this. They
19 could have -- or they could have narrowed their statement to
20 where they just said, we're delisting this. They didn't have
21 to say, we went through these standards and we've decided that
22 it doesn't meet the standards for our cryptocurrency. And when
23 you look at them they're like, you're making a factual
24 statement, not just an implication when doing that.

25 And I think if Your Honor narrows it just to that it does

1 narrow somewhat, and it is still kind of a blob, but I think
2 there is still a factual statement left there that does still
3 have an impact on a competitor and according to the pleadings
4 has had an impact on a competitor.

5 **THE COURT:** All right. Ms. Mehta, can I ask you to
6 address to this?

7 **MS. MEHTA:** Yes, Your Honor. Just I think three
8 points I want to make in response, and then obviously I'm happy
9 to answer any questions you have.

10 The first is to focus on the question of what it means to
11 plausibly allege falsity under any of the causes of action Your
12 Honor identified. Whether we want to call it a low standard or
13 a high standard, what the standard requires is that they plead
14 facts that make their allegation plausible, and then the Ninth
15 Circuit, what that means is not it's a toss-up between two
16 alternative explanations. In fact, what the Ninth Circuit
17 requires for something to be plausibly alleged is that they
18 have to allege facts that tend to exclude the possibility that
19 the alternative explanation is true.

20 There is an obvious alternative explanation here. It's
21 actually the one in the statements, which is that, we made a
22 judgment applying our listing standards, that we no longer were
23 going to list this asset because of concerns that arose after
24 Mr. Sun's involvement, and that is the obvious alternative
25 explanation for everything that happened here. And under Ninth

1 Circuit law, they have to plead facts that would tend to
2 exclude that obvious alternative, and Your Honor can look at
3 your experience and common sense in judging that question.
4 That's the legal standard.

5 The second question is whether they have alleged falsity
6 either literally or by implication. And if we look at the
7 statements that they have alleged, those statements state facts
8 that they're not alleging are false except for pretext, which
9 I'll get to in a minute. The statement is, we looked at this
10 asset; we've decided to delist it. There's no factual
11 allegation that would tend to exclude the possibility that
12 that's exactly what happened, and that's the obvious
13 explanation that Your Honor can infer from the facts that are
14 alleged, including the text of the statements themselves. And
15 you don't even have to go back and look at, for example, the
16 evidence we submitted on the TRO, which showed all of the back
17 and forth of how that happened. Even setting that aside, just
18 the statements themselves offer that obvious alternative
19 explanation.

20 So then all we're left with is pretext, and the argument
21 is you should just ignore the obvious alternative explanation,
22 you should ignore what's in the statements themselves and just
23 take our word for it that this is pretext because some jury
24 might ultimately agree that this could be pretext. That's not
25 the standard for plausibility. And as Your Honor just found

1 when you asked the pointed question to counsel, they don't have
2 a single case in which a claim of falsity has been made and
3 gotten even past the pleading standard, let alone proved, where
4 all that you have is a bald assertion of pretext with no actual
5 evidence or facts to suggest falsity. And that applies to all
6 of the claims.

7 And insofar as they're relying on -- just briefly on the
8 Lanham Act claim. Insofar as they're relying on the
9 implication, the implication that they're asserting is that
10 there was something -- that we thought there was something
11 risky about the asset. At best that's a nonactionable opinion.
12 So even the implication claim under the Lanham Act fails.

13 **THE COURT:** You want to say anything?

14 **MR. SIRONSKI-WHITE:** Sure, Your Honor.

15 **THE COURT:** Go ahead.

16 **MR. KNEUPPER:** I think it was telling that the
17 omission of the full statement, you were told in response that
18 all that they said was that they decided to delist it and they
19 looked at it, but that omits the last part of what they were
20 saying, which is it is because it didn't meet their listing
21 standards. So that is I think the key part in terms of the
22 literal falsity.

23 I think on the Lanham Act issue in terms of whether --
24 whether this is opinion or not, I think looking to the -- it is
25 the *Deerpoint Group* case that we cited in response to their

1 Oracle case, they have said, oh, this is opinion, but I think
2 it's clear under the Lanham Act that that doesn't save you.
3 Just because opinion is mixed in, if there were these
4 implications, we've cited law on that as well, that are
5 nonobvious, then that -- or if the statement is literally true
6 or is opinion, but suggests implications, then it is still
7 actionable.

8 **MS. MEHTA:** Your Honor, may I just very briefly
9 respond to that?

10 **THE COURT:** Go ahead.

11 **MS. MEHTA:** On the point about the listing standards
12 and the suggestion that that's what makes the statements false,
13 I think, one, that's inconsistent with our own allegations,
14 which are that we don't have listing standards, which I think
15 are obviously not true because there's judicially noticeable
16 listing standards on our website. But the listing standards on
17 their face include subjective judgments that Coinbase gets to
18 make as an exchange as to what assets it chooses to list and
19 does not list on its exchange because of the role that it plays
20 in ensuring and protecting its customers.

21 And the suggestion that Coinbase isn't allowed to say, we
22 looked at our standards and we've made the judgment to delist
23 an asset, or that there's something false about that, it just,
24 it proves the point. There's nothing false about that. The
25 obvious explanation which they've pled no facts to undermine is

1 they looked at the standards that are subjective on the
2 website, and it made a judgment based on its own experience and
3 expertise not to list the standard anymore.

4 And Mr. Kneupper made a point of saying, well, they didn't
5 have to say any of this. The reason Coinbase made the
6 announcement it did is because it wanted to give notice to
7 customers that it was no longer going to list the asset.
8 That's why it made that. It didn't give details about what
9 concerns or what risks they were having, all of the types of
10 inferences that Mr. Kneupper is saying that people might draw,
11 that he's speculating people might draw, those aren't in the
12 statement. The statement says, we have listing standards, we
13 continue to evaluate assets across those listing standards,
14 we've made the decision to delist this asset, and it gave the
15 customers notice of that decision. There's nothing about that
16 that's false, and there's no fact that Mr. Kneupper has
17 identified that would allow the Court to find or disregard the
18 obvious explanation, which is that was exactly what happened,
19 and infer some sort of falsity, literal or inferred.

20 **THE COURT:** All right. Folks, I want to move on for a
21 moment to the intentional and negligent interference with
22 perspective economic advantage claims. So Mr. Kneupper, from
23 reviewing your complaint and your papers, right, there's no
24 third party alleged. Where is the third party with whom you
25 had -- with whom your client already had a relationship?

1 **MR. KNEUPPER:** I think it's correct that we would have
2 to amend to make that claim viable. I think we would admit
3 that.

4 **THE COURT:** Can you?

5 **MR. KNEUPPER:** At -- I think we'd like to discuss that
6 with the client. I think it is possible, and it's something
7 that we -- if we didn't think we could, we would inform the
8 Court of that for sure.

9 **THE COURT:** All right. Let's talk --

10 **MS. MEHTA:** Sorry, Your Honor. May I just be heard on
11 that very briefly?

12 **THE COURT:** By all means.

13 **MS. MEHTA:** We went through a TRO process. We filed a
14 motion to dismiss. They chose not to amend as a right, which
15 they could have. We went all the way through briefing, and
16 we're now here on a hearing. And at every one of those points
17 we told them that the law -- we didn't need to tell them, but
18 we did, that the law requires, in order to adequately plead an
19 interference claim, that they need to have identifiable third
20 parties. And we are now here at this hearing. Everyone flew
21 in, or we flew in to be here, and still can't identify a third
22 party. If they had a third party, surely by now they would be
23 able to tell us who it is.

24 **THE COURT:** I think the piece, though -- to
25 Ms. Mehta's point, Mr. Kneupper, right, under Rule 15, right,

1 leave to amend is supposed to be granted, but I'm supposed to
2 understand that it isn't futile to give it to you. So I'm not
3 sure. I didn't push it, because if you're telling me that you
4 need to talk to your client, that tells me that you didn't walk
5 in today knowing that you have allegations that you could add
6 to a complaint.

7 Is that -- tell me why that's not the right reading of
8 your remark.

9 **MR. KNEUPPER:** I would like to make sure that we
10 confirm that we'd want to do that, and there are strategic
11 choices relating to -- it could be do we want to continue it --
12 for example, if Your Honor dismisses everything else, the
13 client may decide we just don't want to do this. And so it's
14 less a is this impossible and more of a is this a choice the
15 client wants to make, and I think that this process is not
16 designed for this to be shut off. It's supposed to give us
17 that chance.

18 **THE COURT:** But let's be clear. I'm asking you if
19 it's -- I'm asking you if you -- I'm asking you if leave to
20 amend is merited. Whether you choose to make use of it is a
21 thing -- is a decision you can make separately later with your
22 client. I'm asking you if it isn't futile, if it -- I'm asking
23 you to help me apply Rule 15 on whether you actually just don't
24 have anything.

25 And part of what I take Ms. Mehta's point to be is that I

1 let you dodge it. So ...

2 **MR. KNEUPPER:** I think what I would point out to the
3 Court is we've -- what we have failed to do is identify names,
4 but we have not failed to identify categories. But part of the
5 problem that goes to -- which is the business partners who are
6 custodians, who are -- but there are strategic and business
7 questions of do we want to proceed down that route.

8 **THE COURT:** Okay. So let me try this one more time.
9 My question to you is not if you want to. My question to
10 you is if you can.

11 **MR. KNEUPPER:** I do not believe it would be futile.

12 **THE COURT:** Okay. Because you think you can identify
13 third parties. Whether or not you or your client choose to do
14 so is a different matter.

15 **MR. KNEUPPER:** Yes.

16 **THE COURT:** But you think you can. You are capable of
17 it.

18 **MR. KNEUPPER:** We've already received the discovery
19 requests as to these third parties, so I don't think it's
20 something where it's unknown. We've received long letters
21 saying preserve what these -- not by name, but these categories
22 of people. Because they're aware of the categories of people
23 that we've said are customers or involved in this process, and
24 I don't think it would be futile.

25 **THE COURT:** You want to be heard further?

1 **MS. MEHTA:** Just very briefly, Your Honor.

2 Again, I don't know what they -- what categories he's
3 alluding to, but we're what, five, six months into this
4 litigation. They knew this was an issue. If they had an
5 identifiable third party with whom they had an existing
6 business relationship, with whom they could plead that there
7 was some sort of wrongful conduct that interfered with the
8 relationship, I am sure that he would be able to identify that
9 party for you today. And if we're going to go through a whole
10 amendment and then find that all they have is vague categories,
11 that is a waste of the Court's time and of our time and money,
12 and by now they should know if they have such a third party.

13 **THE COURT:** I'm going to move us on for a moment on
14 the other two theories of the UCL, of the 1720 claim. We
15 talked a little bit about the fraud theory of it. I just want
16 to talk for a moment about the unfair and unlawful, because
17 again, my sense is that you all haven't -- there isn't yet in
18 your complaint -- you have to show pecuniary losses, and you
19 don't have that yet.

20 So I just want -- or tell me, if I'm wrong, where it is in
21 your complaint.

22 **MR. KNEUPPER:** I think -- well, we've identified
23 there's the allegation that there's a billion dollars in --
24 that there will be a billion dollars in losses.

25 **THE COURT:** No, no, not will be. You have to show

1 that it's happened already, right? So not will be.

2 Uh-huh.

3 **MR. KNEUPPER:** Some of this -- and some loops into
4 like the reputational harm, but that may loop into what Your
5 Honor's already --

6 **THE COURT:** But reputational harm isn't pecuniary
7 harm.

8 **MR. KNEUPPER:** I think that the -- we have not
9 specified a number of harm, but we have outlined why the
10 company is harmed by having wBTC kicked off this platform by no
11 longer having access to it by the -- I mean ...

12 **THE COURT:** I follow all of that, but the 17200
13 claims, that statutory standing requires that you show me
14 monetary harm to your client, and I don't think you've done
15 that.

16 Is that in your complaint somewhere?

17 **MR. KNEUPPER:** A specific number is not in the
18 complaint.

19 **THE COURT:** Okay. So I'm pointing it out to you as a
20 reason, as a separate independent reason that those -- that you
21 haven't shown that your client has statutory standing to bring
22 those claims.

23 **MR. KNEUPPER:** May I say one thing on it?

24 **THE COURT:** Yes.

25 **MR. KNEUPPER:** The one thing I would point out is that

1 the UCL claims have both a restitution aspect and an injunctive
2 relief aspect. And for injunctive relief, one case on page 19
3 of our brief is *Spice Jazz, LLC, versus Youngevity*
4 *International*, which says that we have a right to seek
5 injunctive relief if we're -- if we've been injured or even if
6 we will be injured in the future.

7 **THE COURT:** And your position is that that is separate
8 and apart from having to show standing in the first place; is
9 that right?

10 **MR. KNEUPPER:** That -- standing for an injunction is
11 different from standing for seeking restitution. I think that
12 those are two different remedies. And when you're asking for
13 an injunction, and kind of even the whole TRO issue, has it
14 happened already or will it happen for a temporary restraining
15 order, but if you're facing something that you believe that
16 conduct should be enjoined or seek that sort of relief, I don't
17 think that you have to show monetary harm to seek the
18 injunction.

19 **THE COURT:** Ms. Mehta?

20 **MS. MEHTA:** No, Your Honor.

21 So what they're describing is a potential future cause of
22 action that's not ripe yet. If they're going to assert a claim
23 under the UCL to have UCL standing, they have to show an
24 economic injury that's caused by unfair competition. That's
25 the *Zhang* case from 2013. And they have to show -- let me say

1 it this way just to directly quote the next case: "The
2 availability of an injunction depends on standing to sue."
3 That's the *Kwikset versus Superior Court*, 51 Cal.4th 310 case
4 from 2011. You can't just say, well, I might someday in the
5 future suffer some sort of injury, and therefore I'm going to
6 have standing under the UCL. That's not how it works.

7 **MR. KNEUPPER:** May I briefly respond to the *Zhang*
8 case, Your Honor?

9 **THE COURT:** Uh-huh.

10 **MR. KNEUPPER:** I think the *Zhang* case, the interesting
11 thing as a factual background about the UCL in general and as
12 to the specific issue that is discussed in *Zhang*, is
13 Proposition 64, and it's way back when now, I think more than
14 25 years out, I think, from it. But the UCL originally allowed
15 literally anyone in the state to sue. Like it didn't matter.
16 I could go sue for BiT Global, having no interest at all in the
17 case. And a proposition went on the ballot to restrict that,
18 because it kind of became something where a lot of people were
19 getting sued by random -- you know, that happens sometimes.
20 You get these career plaintiffs, or whatever. And it was---
21 the UCL's standing requirement was restricted by a proposition.

22 When they're using this language, they're specifically
23 talking about this old versions of it where the UCL was just
24 somebody who's a California resident walks in the door, and now
25 they can sue. I don't think that when you're looking at those

1 cases, that they're discussing raising this to some higher
2 standard than you would normally have for just claims in
3 general.

4 **THE COURT:** All right. Let me move us on.

5 All right. I want to talk, then, about the other piece of
6 the Sherman Act we haven't talked about yet, which is the
7 refusal to deal claim, or a theory of it. It's two claims, and
8 I understand it's monopolization or attempt to monopolize, and
9 we've talked a little bit about the discharging statements
10 there. Let's talk about refusal to deal.

11 So Mr. Kneupper, in your complaint I'm -- I guess as I
12 understand it, right, no one, neither of you, no one disputes
13 that a competitor doesn't have to do business with you, right?
14 *Brown Shoe*, right? They don't have to. But there's an
15 exception, right? So you're trying to get -- you're arguing
16 that you were in the *Aspen Skiing* exception to *Brown Shoe*,
17 right?

18 But part of that, right, you have to show that there is no
19 other reason other than to exclude you for them, for your
20 competitor to have engaged in the conduct that you challenge.
21 But your complaint itself shows other reasons that they might
22 have -- and I want to note, right, I think that in various
23 points in your -- and my sense so far is that at various points
24 you're challenging either the creation of their own wrapped
25 Bitcoin or the delisting, it sort of shifts, I thought. You

1 can correct me if I'm wrong. Tell me if I should just be
2 focused -- most of it I think is about the delisting. So, but
3 if as I understand it, right, you've alleged that in the
4 complaint that there are other reasons beyond -- that there are
5 other reasons that they might have delisted you.

6 You are not able to now amend your complaint and
7 contradict your previous allegations, right? That's not a
8 thing that's open to you. So I think you've already conceded
9 that you don't fit neatly into *Aspen Skiing* because you list --
10 they've listed -- you list for them reasons other than for
11 competitive advantage that they would delist BiT Global.

12 So help me. Tell me whatever you want to about that, but
13 that's my reading of it so far.

14 **MR. KNEUPPER:** I guess some -- if I'm permitted to ask
15 would be what specific other reasons you think exclude the
16 *Aspen*, just to focus the argument on?

17 **THE COURT:** Well, so the reason they've given, which I
18 understand you think is pretextual, but is -- because Coinbase
19 concluded that BiT Global doesn't meet their standards, right?
20 Like, it may be pretextual, but that's another reason.

21 **MR. KNEUPPER:** I think the first thing I would point
22 out, Your Honor, is I think the parties are actually in
23 agreement that this cannot be decided, or this particular
24 aspect that you're pointing to, on a motion to dismiss. If I'm
25 reading their reply brief correctly, they -- in order to make a

1 distinction on the factors that they were arguing -- and let me
2 see if I can find the page number on this. I believe it's
3 page 4 of their reply brief they actually start citing cases to
4 the Court saying, look, as to the portion of this that Your
5 Honor's asking about now, this is the element that says the
6 only conceivable rationale or purpose is to sacrifice
7 short-term benefits in order to obtain higher profits.

8 And so if that's the part Your Honor's asking about, I
9 think the parties have both agreed that has to be at summary
10 judgment because it's so evidence focused in order to actually
11 decide whether these purposes are rational or not. Because
12 while Your Honor is pointing out that we're listing these
13 purposes, we're alleging that they are not real, they are
14 pretexts. This is stuff that is being said but is not --

15 **THE COURT:** Okay. But we're back -- no, no, no,
16 you're fine. But we're back to I don't know that I have from
17 you a case where pretext suffices, right? Like, I mean ...
18 okay. Finish your thought, and then I'll ask Ms. Mehta if she
19 agrees you with that the parties agree that this can't be
20 resolved now.

21 **MR. KNEUPPER:** Thank you, Your Honor.

22 I think that is -- that it's -- what you're asking is, or
23 what the factor is asking is whether that's the only
24 conceivable rationale or purpose to sacrifice these four in the
25 long run for profits from this. I think we've alleged that

1 that has happened. We've alleged that this is the reason for
2 it, it is the only reason for it given the facts, given the
3 context, and I do think this comes down to can you decide it
4 now. Because many of these issues are the kind of things that
5 are routinely found by courts to be appropriate at summary
6 judgment, and I think this factor in particular is one that is,
7 from my reading of it, always kicked off to summary judgment.

8 **THE COURT:** What say you, Ms. Mehta?

9 **MS. MEHTA:** Your Honor, we do not agree that this is
10 an issue that gets resolved at summary judgment. They have to
11 plead, in order to plead this very narrow exception to the
12 refusal to deal or the freedom that Coinbase has to deal with
13 who it chooses to deal with, they have to prove that there was
14 no conceivable motivation other than the long run exclusion of
15 competition, and they have to plausibly allege that with facts
16 in the complaint. And I think there's actual two problems
17 here. There's the problem that you identified, Your Honor,
18 which is that their own allegations about what we said about
19 our rationale identify a conceivable rationale. But even if
20 they could dismiss that by just asserting that that's pretext,
21 which they have no support for, they've also pled other
22 rationales that are economic rationales that have nothing to do
23 with excluding competition.

24 And what I'm pointing to specifically are their
25 allegations that Coinbase did this as part of a strategy to

1 create a payment infrastructure and a financial ecosystem on
2 the platform with the goal of driving more revenues to
3 Coinbase, which they allege at paragraphs 49 through 51 of
4 their complaint. That's not -- there's no pretext associated
5 with that. That's a motive that they have -- they've put on
6 us. We don't agree that that's true, but let's accept for
7 purposes of this motion that that's true. That itself is a
8 conceivable, economically justifiable rationale for the
9 decisions that were made, and that the decisions are being
10 challenged here, that is not the long-run exclusion of
11 competition.

12 And so that itself precludes them from being able to plead
13 now or in an amendment the refusal to deal, the very narrow
14 exception to the refusal to deal doctrine that they would need
15 to plead. And that's apart from the issues with respect to
16 market definition and --

17 (Simultaneous crosstalk.)

18 I know you'll get to that, but those would be independent,
19 of course, of this. And this they can't plead around because
20 of what they've already said.

21 **THE COURT:** You want to respond?

22 **MR. KNEUPPER:** I think what we've said, Your Honor, is
23 in order to even plead it at all, we have to say that they are
24 sacrificing short-term benefits to obtaining higher profits.
25 So part of that has to be saying, look, you have this strategy

1 that will make money in the long run and to explain it. But
2 what we're explaining and what we're showing and one thing I
3 point out is on their own web page they are bragging, and this
4 is the compliant that they're quoting tweets and bragging that
5 they're going to displace wBTC as part of that strategy, and
6 it's a necessary part of that strategy, because if wBTC keeps
7 the market share, their whole flywheel strategy that we
8 discussed, it doesn't exist and it doesn't function.

9 It only functions if they get rid of the competitor,
10 because the more people they -- it causes this flywheel they're
11 talking about where it on-boards people as they get control of
12 the market share. That allows them to sort of get users into
13 the ecosystem, which creates network effects, and that's a
14 whole -- that would go into expert reports and economic theory.
15 But it is -- the allegation is not that they're just doing
16 this, it's we alleged it that this was being touted as it's
17 going to be -- we're going to replace wBTC by doing this.

18 **MS. MEHTA:** Your Honor, I just, I realize that I
19 forgot to mention one thing, which is specifically to address
20 the case law question as to whether this is something that can
21 and needs to be resolved at the motion to dismiss stage. It
22 is. They rely on a case called *Subspace Omega* from the Western
23 District of Washington which specifically applies this
24 principle at the pleading stage.

25 Last month in the *Yelp versus Google* case, Judge van

1 Keulen issued on a motion to dismiss an order dismissing a
2 refusal to deal claim because they had not adequately -- Yelp
3 had not adequately alleged that the only conceivable rationale
4 was to exclude competition. And again, that was at the motion
5 to dismiss stage. There has to be that allegation plausibly
6 made at this stage of the case.

7 **THE COURT:** Well, folks, the last piece that I just
8 said to Ms. Mehta I would get -- yes, that I said to Ms. Mehta
9 that I would get to is just I want to -- I want -- we've been
10 walking through all the places where I'm having trouble with
11 the complaint, and I -- and the other piece I just wanted to
12 add was this, right, that frankly I think that there's problems
13 with the refusal to deal allegations because I don't think that
14 you have enough. I think your facts -- I think you've actually
15 pled yourself out of the *Aspen Skiing* exception, which means I
16 would never -- I don't see myself necessarily getting into some
17 of the rest of the substance of it, but I wanted to comment.
18 To the extent that you should, I guess all of this is to say
19 I'll keep noodling on it. You're not getting a ruling from me
20 on the bench today, but I stand by my initial, so far my
21 initial inclination to grant the motion to dismiss in its
22 entirety.

23 To the extent that you do amend, I wanted to make sure to
24 comment to you that I do think that your market definition is
25 problematic both in terms of geography and even just the

1 product market as you have it. I can't understand any
2 plausible reason for limiting this to the United States. Just
3 I don't -- you're welcome to talk with me about it now. It's
4 not a thing I'm planning to get into. It's just both the idea
5 that you would somehow limit it to the United States seems --
6 this is one of those, this is a product that just you can't
7 limit it geographically in that way to my mind, because
8 presumably it is Bitcoin and wrapped Bitcoin are the sorts of
9 things that's available anywhere in the world. So that is my
10 first thought just in terms of geography.

11 And even the product, I got the sense both in your
12 complaint and in your papers that the product -- in different
13 places you seem to either make the product wrapped Bitcoin and
14 in other places it's about the exchange. So I can't even tell
15 exactly what your product market is. And to the extent that
16 you're trying to make it about wrapped Bitcoin, I mean, that
17 sounds like you're making a market for chocolate doughnuts,
18 right? Like, you have nothing about the cross-elasticity or
19 other things that might belong in that market, right, in a way
20 that a chocolate chip cookie makes its way into the market for
21 chocolate doughnuts or even doughnuts of other flavors.

22 So I'm just telling you at this point based on what you've
23 alleged your market doesn't seem right to me. It seems much
24 too narrow and that you are trying to make it this -- right,
25 as -- I'm still relatively new to antitrust, and the broad

1 strokes that I've been told are, right, plaintiffs like little
2 markets, defendants like big markets, right, because in the end
3 the fight is about power. But this looks really little. So
4 I'm not -- any order you get from me isn't gonna dive into
5 either -- anything about the market definition, because based
6 on what's in front of me so far I don't need to get there. But
7 if you do choose to amend, I just want to flag that for you now
8 so that we aren't later talking about it. And it may be that
9 you think those are the right ones, and, you know, do what you
10 will, you're the master of your claim, but those sort of stood
11 out at me.

12 So, folks, that is -- I think that's everything I came out
13 with, but I do like to give you all an opportunity to tell me
14 anything else that you want to either about anything we've
15 already talked about, anything we've already talked about, or
16 anything that I am not -- that I haven't focused on but that
17 you would like me to focus on.

18 I do have one final question just before I hand the floor
19 over to you all about whether, Mr. Kneupper, whether you object
20 to the request for judicial notice.

21 **MR. KNEUPPER:** I don't think that we object to the --
22 I think we already have passed the period for doing that.

23 **THE COURT:** I thought so, too. So we'll go ahead and
24 just I'm going to grant that now to save myself some paper
25 later. Really, I'm saving others, but I'm happy, too.

1 So on that note, it's your motion, Ms. Mehta, so now we'll
2 go back to that. If there's anything you want to add, please
3 do.

4 **MS. MEHTA:** Thank you, Your Honor.

5 Just one thing briefly, which is to address the question
6 of amendment. And I understand the amendment standards, and I
7 understand that typically courts are inclined to grant
8 amendment, but it has to be where there is some hope of a
9 non-futile amendment. And here I think it, as was highlighted
10 not only in the briefing, but frankly just over the last 30
11 minutes, for each of the claims where you identified potential
12 problems with their allegations and asked what facts could be
13 added to amend into a claim, we heard a complete absence of any
14 factual allegation that would address the problem that Your
15 Honor identified. And that is not a function of Mr. Kneupper
16 being put on the spot by some new theory, or new argument, or
17 new, you know, missing allegation. These are issues that have
18 been ventilated not only in the context of the TRO, but in our
19 motion over the last several months. And if there were a way
20 to plead facts to actually plead a viable claim, I am confident
21 that qualified counsel, such as Mr. Kneupper, would have come
22 to court today and told you what those facts are, and the fact
23 that he hasn't I think confirms that there is no plausible
24 allegation that could be made.

25 And to your point earlier, Your Honor. In fact, in many

1 instances, the allegations that have already been made,
2 including the allegations about why we did what we did, what we
3 said when we did it, preclude an amendment that would allow for
4 a viable claim. And notwithstanding the standards relating to
5 amendment, the reason that we have the requirement that the
6 amendment needs to be not futile and needs to be consistent
7 with prior allegations is so that we don't have the Court and
8 the parties burdened with months and months of litigation for a
9 claim that is a nonstarter.

10 And I think with all respect to BiT Global that's what we
11 have here, and it will only continue to take unnecessary time
12 from Your Honor and from us to litigate that. And if they had
13 facts that they could identify that would actually get them to
14 a viable claim, I am sure we would have heard them.

15 That's all, Your Honor.

16 **THE COURT:** Thank you, Ms. Mehta.

17 Mr. Kneupper?

18 **MR. KNEUPPER:** I'll just say, and I'll stick to that
19 one argument rather than -- we've had much argument on this.
20 But I don't think that's correct in terms of -- you know, I've
21 tried to follow Your Honor's questioning and whenever Your
22 Honor's moving in different directions, I want to follow where
23 Your Honor wants to go. But when it's being suggested we don't
24 have facts, I think one of the things that I started talking
25 about in terms of when we were talking about the -- one, the

1 implication issue, and I guess at a broader level *Twombly* and
2 these *Iqbal* changes to pleading, one of the practical things
3 that you've had happen because of this is the same -- we see
4 this in every case. You make your pleading and you start
5 seeing the plausible alternative offered, but you don't know
6 what it's going to be when you are filing your complaint.

7 And we're seeing, you know, at post-complaint for the
8 first time these declarations saying, here's what we did,
9 here's what we communicated to BiT Global about, we asked them
10 for information. Something I was getting into earlier that we
11 could plead, that they are alleging in that declaration that
12 they sent an e-mail to BiT Global and just didn't get a
13 response and information. And I think our client would be able
14 to plead that that's not true, that there was information
15 provided back, and that's when ... the way that the declaration
16 is describing what happened we don't think fits with the facts.
17 We think there are additional -- there's additional factual
18 background about what was going on in this time period in terms
19 of other people making statements about BiT Global in the sort
20 of public discussion about the -- wBTC I suppose is the way to
21 put it.

22 **THE COURT:** Let me ask you this question,
23 Mr. Kneupper, because part of the timeline I just heard laid
24 out is you had the TRO, the motion to dismiss is filed. The
25 declarations you're talking about accompanied the motion to

1 dismiss, yes?

2 **MR. KNEUPPER:** I believe both. I believe it was
3 attached to the TRO, if I'm -- this is from memory, but I think
4 it was attached to the TRO and then reattached to the motion to
5 dismiss, but I could be corrected if I'm wrong.

6 **THE COURT:** No, no, no.

7 And I think part of what -- part of what I'm hearing from
8 Ms. Mehta is that at that point you had an opportunity. You
9 could have amended at that point instead of -- instead of --
10 usually sometimes plaintiffs see the motion to -- if you had
11 them at the TRO, even, you could have made the amendments and
12 made the changes. And not uncommon. I see amendments and
13 then, you know, sometimes it's a nice thing, because we see the
14 amendment and we're like, aha, we don't have to deal with that
15 motion to dismiss, new amended complaint. I'm sure a new
16 motion to dismiss is coming, but, right, that's the point. It
17 starts to refine.

18 So at least part of what I'm hearing is -- I guess tell me
19 why those facts aren't already in your complaint now, or --

20 **MR. KNEUPPER:** So I'll actually just say this is just
21 a law firm strategic decision we make. We never do that. And
22 I think most plaintiffs -- I know the rule's been changed.
23 There's a recent change that you can -- the timing used to be I
24 think you would just do it -- I forget what it was, but now
25 it's within a certain number of days after you get the motion

1 to dismiss and certain number of days after you file. As a
2 plaintiff's attorney you're making strategic decisions, but
3 there are counter things that you're weighing.

4 One of them is, yes, we could go add in new facts and try
5 to do an amended complaint that addresses -- you could do it
6 after the motion to dismiss. The problem is if you do it that
7 way strategically, you are now creating a second round of
8 motions to dismiss where things haven't been waived. If you go
9 in and fight it, you come in with a second motion to dismiss,
10 which you're probably going to face anyway no matter what,
11 where issues are narrowed and there is a waiver issue for
12 anything that the Court decided. They can only raise on their
13 second motion to dismiss arguments that were unavailable in the
14 first one or that they made in the first one.

15 So we faced strategic choices. This is a litigation
16 strategy. But I don't think it can be implied or inferred that
17 this was made because we didn't think we had enough. We just
18 always do that. I mean ...

19 **THE COURT:** All right. Strategic decision aside, tell
20 me now how those facts cure any of the deficiencies we've been
21 discussing for the last few minutes.

22 **MR. KNEUPPER:** We're talking about plausibility.
23 We're talking about is it explanation plausible. And now we
24 don't just have -- we have a internal declaration saying this
25 is what happened. This is what we did, this is what we looked

1 at, this was the decision. And things about that I don't think
2 are plausible. And some of this is stuff that I do think at
3 summary judgment we got into about the statements that Coinbase
4 has made about the SEC. That's in the briefs, and I don't need
5 to belabor it, but I think that from a plausibility perspective
6 when you're coming in saying, I was worried that this guy got
7 sued by the Biden administration's SEC, a reasonable juror
8 could look at that and go, your CEO is saying some stuff that
9 is -- and was sued by the SEC. So is it really true that
10 Coinbase looked at an SEC lawsuit and goes, wow, I mean, we
11 trust the Biden administration, so, I mean ... they can have
12 their opinions. I'm not saying they can't have their opinions,
13 but I am saying that their explanation does not make sense with
14 their public statements.

15 The explanation does not match what BiT Global believed is
16 what actually happened. And when you have submitted this
17 explanation, and that is their plausible alternative, I think
18 if we started pleading those facts in there about what the CEO
19 of Coinbase has said about the SEC, what has been said, those
20 now become things that you can consider, whereas right now
21 they're not part of the complaint, and it does start to make
22 this explanation sound like they didn't really do what they're
23 saying they did. And if it doesn't have credibility, that's
24 what the jury's there to decide: Are you telling the truth
25 when you say this. And to me it just, I think a jury would not

1 believe this.

2 **THE COURT:** All right. So if I'm following you, if
3 granted leave to amend, what you would amend, what you would
4 add in, the facts you would add in are the facts that are made
5 that are put forward in the declarations that were part of the
6 TRO and possibly part of the motion to dismiss. Is there
7 some -- is that correct?

8 **MR. KNEUPPER:** I think, I think, and I believe this is
9 correct that there are additional e-mails back and forth
10 between Coinbase and BiT Global that were not part of their
11 declaration. So when they cut -- we -- I believe that -- and I
12 have to confirm this, but I -- that is my memory is that they
13 have cut this off, this chain, and said this is what we looked
14 at, and there's additional e-mails that do give them the
15 information that they claimed that they were not given. And I
16 think that their -- I do think we can add additional facts
17 about sort of the timing of all this and this, you know.

18 **THE COURT:** No, that's what I'm asking. What I'm
19 asking is what are the additional facts. And so just to
20 restate it so that I have it in my head, it is what is in those
21 declarations and things that you think were left out of those
22 declarations related at least to some e-mails.

23 **MR. KNEUPPER:** I think that is ...

24 **THE COURT:** All right. Anything else?

25 **MR. KNEUPPER:** I think that there -- there is some

1 general discussion in the marketplace sort of out there as
2 these -- in the timing of this happening, where it -- I think
3 Coinbase's statements in the context of some of the news
4 articles, it makes it more likely those implications are what
5 Coinbase was trying to get people to think, that those are just
6 statements about Mr. Sun about, oh, he's come on. You know,
7 some of their suggestion is, oh, you know, this all happened
8 when he came on. I think there's a time period that we could
9 address about when he had come on and there was not any effort
10 to delist, then the product comes out, then there is an effort
11 to delist, and that is happening as people -- sort of novice
12 people are making things, but they're getting into the
13 cryptocurrency -- they sort of have their own journalism
14 ecosphere I guess that you only read if you're in the crypto
15 space, but that people making decisions about this would be
16 reading where they're talking about this and where I think some
17 of the Coinbase implications are being discussed by other
18 people. What's kinda clear, the reaction I think of people to
19 what Coinbase said is exactly what we allege they intended, and
20 I think that that's information we could be adding in, as well.

21 **THE COURT:** Anything else that you want to sort of
22 bring up to my attention?

23 So I realize I stopped you earlier when you were -- so
24 this is your time to tell me the things you wanted to tell me
25 then, but I'm like, no, no, please answer my question. So

1 we're past my questions; this is your time. Is there anything
2 else you want to --

3 **MR. KNEUPPER:** I cannot promise that I will not come
4 up with a brilliant idea later, but at this time that is what I
5 believe we would add.

6 **THE COURT:** All right.

7 **MS. MEHTA:** Your Honor, may I just have one minute?

8 So I want to address those proposed amendments, because I
9 think what we just heard confirms precisely why an amendment
10 would be futile. So let's focus first on the declarations and
11 the e-mail exchanges.

12 What counsel is referring to are declarations we submitted
13 in the context of the TRO, which Your Honor obviously has,
14 which describe the decision-making process that went into the
15 delisting, and then the e-mails he's referring to are e-mails
16 between the two parties, where Coinbase requested certain
17 information in order to confirm or address its concerns and
18 which BiT Global declined to provide that information. There's
19 nothing in what -- how he described the e-mails or that I can
20 think of based on having read those e-mails and those
21 declarations that would in any way touch on the issues that
22 Your Honor identified as being lacking. Nothing about any of
23 that, even if you give him full credit for everything he just
24 said and take it all at face value, changes the facts that
25 we've been talking about, which is that the statements aren't

1 false and haven't been pled to be false aside from pretext,
2 which I'll get to in a minute; the problems with the antitrust
3 claims; the standing problems with respect to the UCL. None of
4 those things that he just mentioned even touch on that.

5 The only thing they could even conceivably go to is the
6 pretext argument. But as Your Honor learned when you asked the
7 question earlier, they have no case law support to suggest that
8 you can plead your way into these claims, which requires them
9 to plead facts that would tend to eliminate the obvious
10 alternative explanations, no support that you can plead your
11 way into the claims by just asserting pretext. And that is all
12 they would be able to do even if you gave them full credit for
13 everything he just identified.

14 And then with respect to the articles, I'm not exactly
15 sure what he's referring to, but again, I don't know how any of
16 that could give rise to claims of falsity or address any of the
17 other problems with their claims. That's precisely what I was
18 talking about earlier when I said if there were facts that
19 would allow them to plead these claims, we would have heard
20 them. We didn't hear them.

21 **THE COURT:** Counsel, I thank you both. I will take it
22 under submission, and you'll get an order in due course.

23 **MR. KNEUPPER:** Thank you, Your Honor.

24 **MS. MEHTA:** Thank you, Your Honor.

25 **THE COURT:** Thank you all for coming in person. Safe

1 travels.

2 **MS. MEHTA:** Thank you.

3 (Proceedings concluded at 11:57 a.m.)

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5 **CERTIFICATE OF REPORTER**

6 I certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.

8 DATE: Saturday, May 31, 2025

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12 Stephen W. Franklin, RMR, CRR, CPE
13 Official Reporter, U.S. District Court
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